

EXHIBIT 16

VEXATIOUS LITIGANT LIST

Prepared and Maintained by the Administrative Office of the Courts
 From Prefiling Orders Received from California Courts
 (Orders prohibiting future filings entered through September 28, 2007)

LAST NAME	FIRST NAME	MIDDLE	COURT	CASE NO.	DATE	COMMENTS
JONES	Earl		Los Angeles Superior Court	SCC016584	03/23/95	Order states specifics.
JONES	Kathy		Orange County Superior Court	SC50567	05/31/01	
JONES	Marcus		Court of Appeal, 2nd Dist, Div 5	B166903	12/26/03	
JONES	Joque	C.	San Diego Superior Court	GIC752621	10/06/00	
JUAREZ	Robert		Los Angeles Superior Court	EF492	08/20/00	
JUDGE	John	E.	Los Angeles Superior Court	SEC77515	04/02/92	
JUDGE	Kathleen	Sean	Los Angeles Superior Court	SEC77515	04/02/92	
JUSTICE	Carlvin		Alameda Superior Court	P255524	09/12/07	
JUSTICE	Robert	Volney	San Diego Superior Court	PN26420	07/29/03	
KABKOW	Howard	Arthur	Los Angeles Superior Court	BC119003	11/09/95	
KAHOOLYZADEH	Behzad		Los Angeles Superior Court	BC285673	04/15/03	
KALAKAY	Michael	Steven	San Diego Municipal Court	553376	01/07/94	
KALAPO	Elizabeth		Los Angeles Superior Court	PC015995	03/10/97	
KALLMEYER	Christine	Caroline	San Diego Superior Court	637201	08/28/91	
KALLMEYER, JR.	James	Gordon	San Diego Superior Court	637201	08/28/91	
KAPELUS	Marvin	B.	Los Angeles Superior Court	LC15468	02/21/97	
KAPELUS	Marvin	B.	Ventura Superior Court	SC014474	01/24/97	
KATZ	Matthew		Los Angeles Superior Court	SC079729	10/17/06	
KAUFMAN	Kandi	(Gail)	Contra Costa Superior Court	D9804359	10/05/00	
KAUFMAN	Lawrence	J.	Los Angeles Superior Court	BC191095	09/15/98	
KEITH	Joan		San Diego Superior Court	GIE032906	10/19/06	
KENNEDY	Sailor	J.	Los Angeles Superior Court	TC010027	05/06/98	
KERR	Nelson	A.	Orange County Superior Court	805925	08/31/99	
KERR	Nelson	A.	Los Angeles Superior Court	GP011572	06/01/07	Order states specifics.
KHAN	Teresa	I.	Santa Clara Superior Court	105CV053109	02/07/06	
KHOOSHABI	Sasan	Safarzadeh	Los Angeles Superior Court	93E09147	12/29/93	
KILE	Robert	G.	Placer Municipal Court	CV29644	05/17/93	
KINDER	James	M.	San Diego Superior Court	SC137653	05/21/03	
KING	Jacqueline		Sonoma Superior Court	SCV236856	07/10/07	
KING	Will	B.	Orange County Superior Court	03CL02874	04/24/03	
KINSEY	Carl	M.	Los Angeles Superior Court	BC190123	07/20/01	
KIPKIRWA	Lazarus		Santa Clara Superior Court	CV780435	11/16/99	
KNISLEY	Franklin	R.	Court of Appeal, 2nd Dist, Div 4	B140372	09/29/00	

VEXATIOUS LITIGANT LIST

Prepared and Maintained by the Administrative Office of the Courts
 From Prefiling Orders Received from California Courts
 (Orders prohibiting future filings entered through October 31, 2007)

LAST NAME	FIRST NAME	MIDDLE	COURT	CASE NO.	DATE	COMMENTS
JOHNSTON	Mark	Alan	Butte Superior Court	119136	07/31/97	
JONES	Annamarie		Modoc Superior Court	FL05059	07/06/05	
JONES	Earl		Los Angeles Superior Court	SC016584	03/23/95	Order states specifics.
JONES	Kathy		Orange County Superior Court	SC50567	05/31/01	
JONES	Marcus		Court of Appeal, 2nd Dist, Div 5	B166903	12/26/03	
JONES	Joque	C.	San Diego Superior Court	GIC752621	10/06/00	
JUAREZ	Robert		Los Angeles Superior Court	EF492	08/20/00	
JUDGE	John	E.	Los Angeles Superior Court	SEC77515	04/02/92	
JUDGE	Kathleen	Sean	Los Angeles Superior Court	SEC77515	04/02/92	
JUSTICE	Carlvin		Alameda Superior Court	P255524	09/12/07	
JUSTICE	Robert	Volney	San Diego Superior Court	PN26420	07/29/03	
KABKOW	Howard	Arthur	Los Angeles Superior Court	BC119003	11/09/95	
KAHOOLYZADEH	Behzad		Los Angeles Superior Court	BC285673	04/15/03	
KALAKAY	Michael	Steven	San Diego Municipal Court	553376	01/07/94	
KALAPOUS	Elizabeth		Los Angeles Superior Court	PC015995	03/10/97	
KALLMEYER	Christine	Caroline	San Diego Superior Court	637201	08/28/91	
KALLMEYER, JR.	James	Gordon	San Diego Superior Court	637201	08/28/91	
KAPELUS	Marvin	B.	Los Angeles Superior Court	LC15468	02/21/97	
KAPELUS	Marvin	B.	Ventura Superior Court	SC014474	01/24/97	
KATZ	Matthew		Los Angeles Superior Court	SC079729	10/17/06	
KAUFMAN	Kandi	(Gail)	Contra Costa Superior Court	D9804359	10/05/00	
KAUFMAN	Lawrence	J.	Los Angeles Superior Court	BC191095	09/15/98	
KEITH	Joan		San Diego Superior Court	GIE032906	10/19/06	
KENNEDY	Sailor	J.	Los Angeles Superior Court	TC010027	05/06/98	
KERR	Nelson	A.	Orange County Superior Court	805925	08/31/99	
KERR	Nelson	A.	Los Angeles Superior Court	GP011572	06/01/07	Order states specifics.
KHAN	Teresa	I.	Santa Clara Superior Court	105CV053109	02/07/06	
KHOOSHABI	Sasan	Safarzadeh	Los Angeles Superior Court	93E09147	12/29/93	
KILE	Robert	G.	Placer Municipal Court	CV29644	05/17/93	
KINDER	James	M.	San Diego Superior Court	SC137653	05/21/03	
KING	Jacqueline		Sonoma Superior Court	SCV236856	07/10/07	
KING	Will	B.	Orange County Superior Court	03CL02874	04/24/03	
KINSEY	Carl	M.	Los Angeles Superior Court	BC190123	07/20/01	

VEXATIOUS LITIGANT LIST

Prepared and Maintained by the Administrative Office of the Courts
 From Prefiling Orders Received from California Courts
 (Orders prohibiting future filings entered through January 31, 2008)

LAST NAME	FIRST NAME	MIDDLE	COURT	CASE NO.	DATE	COMMENTS
KEITH	Joan		San Diego Superior Court	GIE032906	10/19/06	
KENNEDY	Sailor	J.	Los Angeles Superior Court	TC010027	05/06/98	
KERR	Nelson	A.	Orange County Superior Court	805925	08/31/99	
KERR	Nelson	A.	Los Angeles Superior Court	GP011572	06/01/07	Order states specifics.
KHAN	Teresa	I.	Santa Clara Superior Court	105CV053109	02/07/06	
KHOOSHABI	Sasan	Safarzadeh	Los Angeles Superior Court	93E09147	12/29/93	
KILE	Robert	G.	Placer Municipal Court	CV29644	05/17/93	
KIM	Ho	Jeong	Los Angeles Superior Court	BC371416	10/18/07	
KINDER	James	M.	San Diego Superior Court	SC137653	05/21/03	
KING	Jacqueline		Sonoma Superior Court	SCV236856	07/10/07	
KING	Will	B.	Orange County Superior Court	03CL02874	04/24/03	
KINSEY	Carl	M.	Los Angeles Superior Court	BC190123	07/20/01	
KIPKIRWA	Lazarus		Santa Clara Superior Court	CV780435	11/16/99	
KITOVER	Arkady		San Francisco Superior Court	400044	05/02/05	
KITOVER	Nina		San Francisco Superior Court	400044	05/04/05	
KNISLEY	Franklin	R.	Court of Appeal, 2nd Dist, Div 4	B140372	09/29/00	
KOBAYASHI	Yuki		Los Angeles Superior Court	BC170895	11/17/00	Limited to a specific case.
KOBAYASHI	Yukoh		Los Angeles Superior Court	C698162	10/21/92	
KOHAN	Khanbaba		Los Angeles Superior Court	BC304625	03/04/04	
KOHL	Barry	Steven	Los Angeles Superior Court	B085736	02/21/95	
KONIECZNY	John	F.	Court of Appeal, 2nd Dist, Div 1	KC019892	12/15/97	
KOONTZ	Kenneth	Roy	Los Angeles Superior Court	YC027055	06/01/01	
KOONTZ	Temesha		Sacramento Superior Court	07CP01256	11/26/07	
KOVACEVIC	Carmen		San Diego Superior Court	GIN017046	11/12/02	
KOVACIC	Ninoslav	S.	San Diego Superior Court	GIC795785	03/07/03	
KRAIN	Lawrence	S.	Orange County Superior Court	492153	03/01/96	
KROLL	Tillman		Los Angeles (Pasadena) Muni Ct	91C01142	07/15/91	
KUTSKO	Michael	J.	San Francisco Superior Court	920844	12/26/91	
LABANBKOFF	Fred	G.	Sonoma Superior Court	SCV210852	10/21/96	
LABANBKOFF	Fred	G.	Sonoma Superior Court	211777	07/01/96	
LACKLAND	Bobbietter	J.	Contra Costa Municipal Court	26919	06/14/93	
LACY	Brenda	Joyce	San Francisco Superior Court	944947	10/28/92	
LAFAZAN	Gwen	R.	Los Angeles Superior Court	PC023731	09/24/99	

EXHIBIT 17

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3 San Diego, CA 92103-6014
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AUG 14 '07 PM 01:47

6 Attorney for Plaintiff JAMES M. KINDER, an individual

7
8 **COPY**

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 JAMES M. KINDER,

12 Plaintiff,

13 v.

14 NATIONWIDE RECOVERY SYSTEMS, Ltd.,
15 and DOES 1 through 100, inclusive,

16 Defendants.

CASE NO. 37-2007-00073158-CU-MC-CTL

COMPLAINT FOR DAMAGES

Violations of Telephone Consumer
Protection Act of 1991

17 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges
18 as follows:

19 **GENERAL ALLEGATIONS**

20 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
21 Diego, State of California.

22 2. Defendant NATIONWIDE RECOVERY SYSTEMS, Ltd. (hereinafter referred to
23 as "Defendant"), was at all times herein mentioned a Texas Domestic Limited Partnership, doing
24 business in the County of San Diego, State of California.

25 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
26 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
27 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
28 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants

1 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
2 herein alleged were proximately caused by their conduct.

3 4. At all times herein mentioned each defendant was the partner, agent and employee
4 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
5 and employment and each defendant ratified the conduct of each co-defendant herein.

6 **FIRST AND ONLY CAUSE OF ACTION**
7 [Violation of Telephone Consumer Protection Act of 1991]

8 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
9 reference.

10 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer
11 Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

12 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code
13 makes it unlawful for any person to "Make any call (other than a call made for emergency purposes
14 or made with the prior express consent of the called party) using any automatic telephone dialing
15 system or an artificial or prerecorded voice...to any telephone number assigned to a paging service,
16 specialized mobile radio service, or other radio common carrier service, or any service for which the
17 called party is charged for the call."

18 8. Defendants have been calling Plaintiff's number assigned to a paging service, using
19 an Automatic Telephone Dialing System and/or an artificial or prerecorded voice on at least 186
20 occasions within the statutory period of the last 4 years, pursuant to 47 U.S.C. § 1658. These 186
21 calls are only the calls known to Plaintiff at this time and Plaintiff states on information and belief,
22 without yet having the aid of full discovery, that it is quite likely that Defendant has made many
23 more violative calls to Plaintiff's number assigned to a paging service than the 186 of which he is
24 currently aware.

25 9. Subdivision (b) (1) of Section 64.1200 of Title 47 of the Code of Federal
26 Regulations requires that all prerecorded telephone messages disseminated within the United States
27 must "At the beginning of the message, state clearly the identity of the business, individual, or other
28 entity that is responsible for initiating the call. If a business is responsible for initiating the call, the

1 name under which the entity is registered to conduct business with the State Corporation
2 Commission (or comparable regulatory authority) must be stated."

3 10. Defendants' illegal prerecorded message calls failed to comply with this requirement.

4 11. Subdivision (b) (2) of Section 64.1200 of Title 47 of the Code of Federal
5 Regulations requires that all prerecorded telephone messages disseminated within the United States
6 must "state clearly the telephone number (other than that of the autodialer or prerecorded message
7 player that placed the call) of such business, other entity, or individual. The telephone number may
8 not be a 900 number or any number for which charges exceed local or long distance transmission
9 charges. For telemarketing messages to residential telephone subscribers, such telephone numbers
10 must permit any individual to make a do-not-call request during regular business hours for the
11 duration of the telemarketing campaign."

12 12. Defendants' illegal prerecorded message calls failed to comply with this
13 requirement.

14 13. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
15 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii), 47 C.F.R.
16 §64.1200 (b) (1) and 47 C.F.R. §64.1200 (b) (2). Plaintiff is entitled to a minimum of \$500.00 in
17 statutory damages for each such violation. If the court finds that defendants' violations were willful
18 or knowing, it may, in its discretion, award up to three times that amount.

19 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
20 follows:

21 On the FIRST AND ONLY CAUSE OF ACTION:

- 22 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 and 47 C.F.R. §
- 23 64.1200;
- 24 2. For an award of \$1,500.00 for each such violation found to have been willful;
- 25 3. For costs of suit herein incurred; and

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1 4. For such other and further relief as the Court deems proper.

2 Dated: August 14, 2007

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By:



CHAD AUSTIN, Esq.
Attorney for Plaintiff JAMES M.
KINDER

EXHIBIT 18

FILED
CIVIL BUSINESS OFFICE 8
CENTRAL DIVISION

07 AUG 30 PM 4:40

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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4 Attorney for Plaintiff JAMES M. KINDER, an individual

5
6
7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**
10

11 **JAMES M. KINDER,**

12 **Plaintiff,**

13 **v.**

14 **ENHANCED RECOVERY CORPORATION,**
15 **and DOES 1 through 100, inclusive,**

16 **Defendants.**

CASE NO. 37-2007-00074113-CU-MC-CTL

COMPLAINT FOR DAMAGES

**Violations of Telephone Consumer
Protection Act of 1991**

17 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges a
18 follows:

19 **GENERAL ALLEGATIONS**

20 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
21 Diego, State of California.

22 2. Defendant ENHANCED RECOVERY CORPORATION (hereinafter referred to a
23 "Defendant"), was at all times herein mentioned a Delaware corporation, doing business in the
24 County of San Diego, State of California.

25 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
26 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.

27 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

28 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants

1 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
2 herein alleged were proximately caused by their conduct.

3 4. At all times herein mentioned each defendant was the partner, agent and employee
4 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
5 and employment and each defendant ratified the conduct of each co-defendant herein.

6 **FIRST AND ONLY CAUSE OF ACTION**
7 **[Violation of Telephone Consumer Protection Act of 1991]**

8 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
9 reference.

10 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer
11 Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

12 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code
13 makes it unlawful for any person to "Make any call (other than a call made for emergency purposes
14 or made with the prior express consent of the called party) using any automatic telephone dialing
15 system or an artificial or prerecorded voice...to any telephone number assigned to a paging service,
16 specialized mobile radio service, or other radio common carrier service, or any service for which the
17 called party is charged for the call."

18 8. Defendants have been calling Plaintiff's number assigned to a paging service, using
19 an Automatic Telephone Dialing System and/or an artificial or prerecorded voice on at least 326
20 occasions within the statutory period of the last 4 years, pursuant to 47 U.S.C. § 1658. These 326
21 calls are only the calls known to Plaintiff at this time and Plaintiff states on information and belief,
22 without yet having the aid of full discovery, that it is quite likely that Defendant has made many
23 more violative calls to Plaintiff's number assigned to a paging service than the 326 of which he is
24 currently aware.

25 9. Subdivision (b) (1) of Section 64.1200 of Title 47 of the Code of Federal
26 Regulations requires that all prerecorded telephone messages disseminated within the United States
27 must "At the beginning of the message, state clearly the identity of the business, individual, or other
28 entity that is responsible for initiating the call. If a business is responsible for initiating the call, the

1 name under which the entity is registered to conduct business with the State Corporation
2 Commission (or comparable regulatory authority) must be stated."

3 10. Defendants' illegal prerecorded message calls failed to comply with this requirement.

4 11. Subdivision (b) (2) of Section 64.1200 of Title 47 of the Code of Federal
5 Regulations requires that all prerecorded telephone messages disseminated within the United States
6 must "state clearly the telephone number (other than that of the autodialer or prerecorded message
7 player that placed the call) of such business, other entity, or individual. The telephone number may
8 not be a 900 number or any number for which charges exceed local or long distance transmission
9 charges. For telemarketing messages to residential telephone subscribers, such telephone numbers
10 must permit any individual to make a do-not-call request during regular business hours for the
11 duration of the telemarketing campaign."

12 12. Defendants' illegal prerecorded message calls failed to comply with this requirement.

13 13. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
14 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii) and 47 C.F.R.
15 §64.1200. Plaintiff is entitled to a minimum of \$500.00 in statutory damages for each such violation.
16 If the court finds that defendants' violations were willful or knowing, it may, in its discretion, award
17 up to three times that amount.

18 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
19 follows:

20 On the FIRST AND ONLY CAUSE OF ACTION:

- 21 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 and 47 C.F.R. §
22 64.1200;
23 2. For an award of \$1,500.00 for each such violation found to have been willful;
24 3. For costs of suit herein incurred; and
25 4. For such further relief as the Court deems proper.

26 Dated: August 30, 2007


27 By: 
28 CHAD AUSTIN, Esq.
Attorney for Plaintiff JAMES M.
KINDER

EXHIBIT 19

Case 3:07-cv-00877-DMS-POR Document 1 Filed 05/15/2007 Page 1 of 27

FILED

2007 MAY 15 PM 12:24

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY RA DEPUTY

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6 Ansis V. Viksnins, Esq. (Pro Hac Vice Application Pending)
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9 Tel: (612) 371-3249
Fax: (612) 371-3207
10

11 Attorneys for Defendant BANKFIRST, INC.
12

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 '07 CV 0877 DMS POR

CASE NO.

16 JAMES M. KINDER,
17 Plaintiff,

18 vs.

19 BANKFIRST, and DOES 1 through 100,
20 inclusive,

21 Defendants.

NOTICE OF REMOVAL OF CIVIL
ACTION UNDER 28 U.S.C. SECTION
1441(b) (DIVERSITY JURISDICTION)

22 TO THE HONORABLE JUDGES OF THE ABOVE-CAPTIONED COURT AND TO
23 PLAINTIFF HEREIN AND HIS ATTORNEY OF RECORD:

24 PLEASE TAKE NOTICE that Defendant Bankfirst, Inc. ("Bankfirst" or "Defendant")
25 hereby removes to this Court the state action described below in accordance with 28 U.S.C.
26 sections 1332, 1441 and 1446, *et seq.*

27 ///

28 ///

Case 3:07-cv-00877-DMS-POR Document 1 Filed 05/15/2007 Page 6 of 27

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2 3129 India Street
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6 Attorney for Plaintiff JAMES M. KINDER, an individual

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10
11 JAMES M. KINDER,

12 Plaintiff,

13 v.

14 EQUIDATA, Inc.,
15 and DOES 1 through 100, inclusive,

16 Defendants.
17

CASE NO. 37-2007-00066491-CU-MC-CTL

COMPLAINT FOR DAMAGES

Violation(s) of Telephone Consumer
Protection Act of 1991

18 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges as
19 follows:

20 **GENERAL ALLEGATIONS**

21 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
22 Diego, State of California.

23 2. Defendant EQUIDATA, Inc. (hereinafter referred to as "Defendant").
24 was at all times herein mentioned a Virginia corporation, doing business in the County of San Diego,
25 State of California.

26 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
27 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
28 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

Case 3:07-cv-00877-DMS-POR Document 1 Filed 05/15/2007 Page 7 of 27

1 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants
2 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
3 herein alleged were proximately caused by their conduct.

4 4. At all times herein mentioned each defendant was the partner, agent and employee
5 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
6 and employment and each defendant ratified the conduct of each co-defendant herein.

7 **FIRST AND ONLY CAUSE OF ACTION**
8 **[Violation of Telephone Consumer Protection Act of 1991]**

9 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
10 reference.

11 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer
12 Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

13 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code
14 makes it unlawful for any person to "Make any call (other than a call made for emergency purposes
15 or made with the prior express consent of the called party) using any automatic telephone dialing
16 system or an artificial or prerecorded voice...to any telephone number assigned to a paging service,
17 specialized mobile radio service, or other radio common carrier service, or any service for which the
18 called party is charged for the call."

19 8. Even though the TCPA is a federal statute, state courts have exclusive jurisdiction
20 over private actions brought pursuant to its provisions.

21 9. For the statutory period of the last 4 years, per 47 U.S.C. 1658, Defendants have been
22 calling Plaintiff's number assigned to a paging service, using an artificial or prerecorded voice,
23 without Plaintiff's express permission. These calls were not made for any emergency purpose, nor
24 were these calls exempt under subdivision (c) of section 64.1200 of title 47 of the Code of Federal
25 Regulations.

26 10. Subdivision (b) (1) of Section 64.1200 of Title 47 of the Code of Federal
27 Regulations requires that all prerecorded telephone messages disseminated within the United States
28 must "At the beginning of the message, state clearly the identity of the business, individual, or other

1 entity that is responsible for initiating the call. If a business is responsible for initiating the call, the
2 name under which the entity is registered to conduct business with the State Corporation
3 Commission (or comparable regulatory authority) must be stated."

4 11. Defendants' illegal prerecorded collection calls failed to comply with this
5 requirement.

6 12. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
7 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii) and 47 C.F.R.
8 §64.1200 (b) (1). Plaintiff may recover \$500.00 for each violation, or both. If the court finds that
9 defendants' violations were willful or knowing, it may, in its discretion, award up to three times that
10 amount.

11
12 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
13 follows:

14 On the FIRST AND ONLY CAUSE OF ACTION:

- 15 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 and 47 C.F.R.
16 §64.1200 (b) (1);
17 2. For an award of \$1,500.00 for each such violation found to have been willful;
18 3. For costs of suit herein incurred; and
19 4. For such further relief as the Court deems proper.

20
21 Dated: May 9, 2007


22
23
24 By: 
25 CHAD AUSTIN, Esq.
26 Attorney for Plaintiff JAMES M.
27 KINDER
28

EXHIBIT 20

1 Chad Austin, Esq. SBN 235457
2 3129 India Street
3 San Diego, CA 92103-6014
4 Telephone: (619) 297-8888
5 Facsimile: (619) 295-1401

6 Attorney for Plaintiff JAMES M. KINDER, an individual

2007 SEP 11 PM 3:51

SAN DIEGO COUNTY, CA

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10
11 JAMES M. KINDER,

12 Plaintiff,

13 v.

14 SPRINT PCS ASSETS, L.L.C., SPRINT PCS
15 LICENSE, L.L.C. and DOES 1 through 100,
16 inclusive,

17 Defendants.

CASE NO. 37-2007-00074754-CU-MC-CTL

COMPLAINT FOR DAMAGES

Violations of Telephone Consumer
Protection Act of 1991

18 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges
19 as follows:

20 **GENERAL ALLEGATIONS**

21 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
22 Diego, State of California.

23 2. Defendants SPRINT PCS ASSETS, L.L.C. and SPRINT PCS LICENSE, L.L.C.
24 (hereinafter referred to as "Defendants"), were at all times herein mentioned Delaware limited
25 liability companies, doing business in the County of San Diego, State of California.

26 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
27 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
28 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

1 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants
2 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
3 herein alleged were proximately caused by their conduct.

4 4. At all times herein mentioned each defendant was the partner, agent and employee
5 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
6 and employment and each defendant ratified the conduct of each co-defendant herein.

7 **FIRST AND ONLY CAUSE OF ACTION**
8 **[Violation of Telephone Consumer Protection Act of 1991]**

9 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
10 reference.

11 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer
12 Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 - "TCPA").

13 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code
14 makes it unlawful for any person to "Make any call (other than a call made for emergency purposes
15 or made with the prior express consent of the called party) using any automatic telephone dialing
16 system or an artificial or prerecorded voice...to any telephone number assigned to a paging service,
17 specialized mobile radio service, or other radio common carrier service, or any service for which the
18 called party is charged for the call."

19 8. Defendants have been calling Plaintiff's number assigned to a paging service, using
20 an Automatic Telephone Dialing System and/or an artificial or prerecorded voice on at least 169
21 occasions within the statutory period of the last 4 years, pursuant to 47 U.S.C. § 1658. These 169
22 calls are only the calls known to Plaintiff at this time and Plaintiff states on information and belief,
23 without yet having the aid of full discovery, that it is quite likely that Defendant has made many
24 more violative calls to Plaintiff's number assigned to a paging service than the 169 of which he is
25 currently aware.

26 9. Subdivision (b) (1) of Section 64.1200 of Title 47 of the Code of Federal
27 Regulations requires that all prerecorded telephone messages disseminated within the United States
28 must "At the beginning of the message, state clearly the identity of the business, individual, or other

1 entity that is responsible for initiating the call. If a business is responsible for initiating the call, the
2 name under which the entity is registered to conduct business with the State Corporation
3 Commission (or comparable regulatory authority) must be stated."

4 10. Defendants' illegal prerecorded message calls failed to comply with this requirement.

5 11. Subdivision (b) (2) of Section 64.1200 of Title 47 of the Code of Federal
6 Regulations requires that all prerecorded telephone messages disseminated within the United States
7 must "state clearly the telephone number (other than that of the autodialer or prerecorded message
8 player that placed the call) of such business, other entity, or individual. The telephone number may
9 not be a 900 number or any number for which charges exceed local or long distance transmission
10 charges. For telemarketing messages to residential telephone subscribers, such telephone numbers
11 must permit any individual to make a do-not-call request during regular business hours for the
12 duration of the telemarketing campaign."

13 12. Defendants' illegal prerecorded message calls failed to comply with this requirement.

14 13. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
15 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii), 47 C.F.R.
16 §64.1200 (b) (1) and 47 C.F.R. §64.1200 (b) (2). Plaintiff is entitled to a minimum of \$500.00 in
17 statutory damages for each such violation. If the court finds that defendants' violations were willful
18 or knowing, it may, in its discretion, award up to three times that amount.

19 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
20 follows:

21 On the FIRST AND ONLY CAUSE OF ACTION:

- 22 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 and 47 C.F.R. §
23 64.1200;
24 2. For an award of \$1,500.00 for each such violation found to have been willful;
25 3. For costs of suit herein incurred; and

26 ///

27 ///

28 ///

1 4. For such other and further relief as the Court deems proper.

2 Dated: September 10, 2007

3
4 By: 

5 CHAD AUSTIN, Esq.
6 Attorney for Plaintiff JAMES M.
7 KINDER
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EXHIBIT 21

10/30/2007 14:36

310-242-2222

UNIT LCP

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 Telephone: (619) 297-8888
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4 Attorney for Plaintiff JAMES M. KINDER, an individual
 5
 6
 7

FILED
 CIVIL BUSINESS OFFICE 8
 CENTRAL DIVISION

07 AUG 30 PM 4:40

CLERK-SUPERIOR COURT
 SAN DIEGO COUNTY, CA

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF SAN DIEGO**
 10

11 JAMES M. KINDER,

12 Plaintiff,

13 v.

14 ASSET ACCEPTANCE, LLC and DOES 1
 15 through 100, inclusive,

16 Defendants.

CASE NO. 2007-CV-02132-DMS-AJB

COMPLAINT FOR DAMAGES

Violations of Telephone Consumer
 Protection Act of 1991

17 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges as
 18 follows:

19 **GENERAL ALLEGATIONS**

20 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
 21 Diego, State of California.

22 2. Defendant ASSET ACCEPTANCE, LLC (hereinafter referred to as "Defendant"),
 23 was at all times herein mentioned a Delaware limited liability company, doing business in the
 24 County of San Diego, State of California.

25 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
 26 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
 27 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
 28 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants

1 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
2 herein alleged were proximately caused by their conduct.

3 4. At all times herein mentioned each defendant was the partner, agent and employee
4 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
5 and employment and each defendant ratified the conduct of each co-defendant herein.

6 **FIRST AND ONLY CAUSE OF ACTION**
7 [Violation of Telephone Consumer Protection Act of 1991]

8 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
9 reference.

10 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer
11 Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 - "TCPA").

12 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code
13 makes it unlawful for any person to "Make any call (other than a call made for emergency purposes
14 or made with the prior express consent of the called party) using any automatic telephone dialing
15 system or an artificial or prerecorded voice...to any telephone number assigned to a paging service,
16 specialized mobile radio service, or other radio common carrier service, or any service for which the
17 called party is charged for the call."

18 8. Defendants have been calling Plaintiff's number assigned to a paging service, using
19 an Automatic Telephone Dialing System and/or an artificial or prerecorded voice on at least 607
20 occasions within the statutory period of the last 4 years, pursuant to 47 U.S.C. § 1658. These 607
21 calls are only the calls known to Plaintiff at this time and Plaintiff states on information and belief,
22 without yet having the aid of full discovery, that it is quite likely that Defendant has made many
23 more violative calls to Plaintiff's number assigned to a paging service than the 607 of which he is
24 currently aware.

25 9. Subdivision (b) (1) of Section 64.1200 of Title 47 of the Code of Federal
26 Regulations requires that all prerecorded telephone messages disseminated within the United States
27 must "At the beginning of the message, state clearly the identity of the business, individual, or other
28 entity that is responsible for initiating the call. If a business is responsible for initiating the call, the

1 name under which the entity is registered to conduct business with the State Corporation
2 Commission (or comparable regulatory authority) must be stated."

3 10. Defendants' illegal prerecorded message calls failed to comply with this requirement.

4 11. Subdivision (b) (2) of Section 64.1200 of Title 47 of the Code of Federal
5 Regulations requires that all prerecorded telephone messages disseminated within the United States
6 must "state clearly the telephone number (other than that of the autodialer or prerecorded message
7 player that placed the call) of such business, other entity, or individual. The telephone number may
8 not be a 900 number or any number for which charges exceed local or long distance transmission
9 charges. For telemarketing messages to residential telephone subscribers, such telephone numbers
10 must permit any individual to make a do-not-call request during regular business hours for the
11 duration of the telemarketing campaign."

12 12. Defendants' illegal prerecorded message calls failed to comply with this requirement.

13 13. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
14 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii) and 47 C.F.R.
15 §64.1200. Plaintiff is entitled to a minimum of \$500.00 in statutory damages for each such violation.
16 If the court finds that defendants' violations were willful or knowing, it may, in its discretion, award
17 up to three times that amount.

18 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
19 follows:

20 On the FIRST AND ONLY CAUSE OF ACTION:

- 21 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 and 47 C.F.R. §
22 64.1200;
- 23 2. For an award of \$1,500.00 for each such violation found to have been willful;
- 24 3. For costs of suit herein incurred; and
- 25 4. For such further relief as the Court deems proper.

26 Dated: August 30, 2007


27 By: 
28 CHAD AUSTIN, Esq.
Attorney for Plaintiff JAMES M.
KINDER

EXHIBIT 22

1 Chad Austin, Esq. SBN 235457
2 3129 India Street
3 San Diego, CA 92103-6014
4 Telephone: (619) 297-8888
5 Facsimile: (619) 295-1401

6 Attorney for Plaintiff JAMES M. KINDER, an individual

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10
11 JAMES M. KINDER,
12 Plaintiff,

13 v.

14 ASTRA BUSINESS SERVICES, Inc. and
15 DOES 1 through 100, inclusive,
16 Defendants.

CASE NO. 37-2007-00073375-CU-MC-CTL

COMPLAINT FOR DAMAGES

Violations of Telephone Consumer
Protection Act of 1991

17 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges
18 as follows:

19 GENERAL ALLEGATIONS

20 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
21 Diego, State of California.

22 2. Defendant ASTRA BUSINESS SERVICES, Inc. (hereinafter referred to as
23 "Defendant"), was at all times herein mentioned a Delaware corporation, doing business in the
24 County of San Diego, State of California.

25 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
26 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
27 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
28

1 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants
2 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
3 herein alleged were proximately caused by their conduct.

4 4. At all times herein mentioned each defendant was the partner, agent and employee
5 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
6 and employment and each defendant ratified the conduct of each co-defendant herein.

7 **FIRST AND ONLY CAUSE OF ACTION**
8 [Violation of Telephone Consumer Protection Act of 1991]

9 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
10 reference.

11 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer
12 Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

13 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code
14 makes it unlawful for any person to "Make any call (other than a call made for emergency purposes
15 or made with the prior express consent of the called party) using any automatic telephone dialing
16 system or an artificial or prerecorded voice...to any telephone number assigned to a paging service,
17 specialized mobile radio service, or other radio common carrier service, or any service for which the
18 called party is charged for the call."

19 8. Defendants have been calling Plaintiff's number assigned to a paging service, using
20 an Automatic Telephone Dialing System and/or an artificial or prerecorded voice on at least 73
21 occasions within the statutory period of the last 4 years, pursuant to 47 U.S.C. § 1658. These 73
22 calls are only the calls known to Plaintiff at this time and Plaintiff states on information and belief,
23 without yet having the aid of full discovery, that it is quite likely that Defendant has made many
24 more violative calls to Plaintiff's number assigned to a paging service than the 73 of which he is
25 currently aware.

26 9. Subdivision (b) (1) of Section 64.1200 of Title 47 of the Code of Federal
27 Regulations requires that all prerecorded telephone messages disseminated within the United States
28 must "At the beginning of the message, state clearly the identity of the business, individual, or other

1 entity that is responsible for initiating the call. If a business is responsible for initiating the call, the
2 name under which the entity is registered to conduct business with the State Corporation
3 Commission (or comparable regulatory authority) must be stated."

4 10. Defendants' illegal prerecorded message calls failed to comply with this requirement.

5 11. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
6 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii) and 47 C.F.R. §
7 64.1200 (b) (1). Plaintiff is entitled to a minimum of \$500.00 in statutory damages for each such
8 violation. If the court finds that defendants' violations were willful or knowing, it may, in its
9 discretion, award up to three times that amount.

10 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
11 follows:

12 On the FIRST AND ONLY CAUSE OF ACTION:

- 13 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 and 47 C.F.R. §
14 64.1200;
15 2. For an award of \$1,500.00 for each such violation found to have been willful;
16 3. For costs of suit herein incurred; and
17 4. For such other and further relief as the Court deems proper.

18 Dated: August 20, 2007

19
20 By: 

21 CHAD AUSTIN, Esq.
22 Attorney for Plaintiff JAMES M.
23 KINDER
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25
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27
28

EXHIBIT 23

1 Chad Austin, Esq. SBN 235457
2 3129 India Street
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6 Attorney for Plaintiff JAMES M. KINDER, an individual

07 OCT - 1 PM 4:38

07 OCT - 1 PM 4:38

CLERK OF COURT
SAN DIEGO COUNTY, CA

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

37-2007-00076045-CU-MC-CTL

11 JAMES M. KINDER,

12 Plaintiff,

13 v.

14 DISCOVER CARD SERVICES, Inc. and
15 DOES 1 through 100, inclusive,

16 Defendants.

CASE NO.

COMPLAINT FOR DAMAGES

Violations of Telephone Consumer
Protection Act of 1991

17 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges as
18 follows:

19 **GENERAL ALLEGATIONS**

20 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
21 Diego, State of California.

22 2. Defendant DISCOVER CARD SERVICES, Inc. (hereinafter referred to as
23 "Defendant"), was at all times herein mentioned a Delaware corporation, doing business in the
24 County of San Diego, State of California.

25 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
26 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
27 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
28 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants

1 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
2 herein alleged were proximately caused by their conduct.

3 4. At all times herein mentioned each defendant was the partner, agent and employee
4 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
5 and employment and each defendant ratified the conduct of each co-defendant herein.

6 **FIRST AND ONLY CAUSE OF ACTION**
7 [Violation of Telephone Consumer Protection Act of 1991]

8 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
9 reference.

10 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer
11 Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

12 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code
13 makes it unlawful for any person to "Make any call (other than a call made for emergency purposes
14 or made with the prior express consent of the called party) using any automatic telephone dialing
15 system or an artificial or prerecorded voice...to any telephone number assigned to a paging service,
16 specialized mobile radio service, or other radio common carrier service, or any service for which the
17 called party is charged for the call."

18 8. Defendants have been calling Plaintiff's number assigned to a paging service, using
19 an Automatic Telephone Dialing System and/or an artificial or prerecorded voice on at least 78
20 occasions within the statutory period of the last 4 years, pursuant to 47 U.S.C. § 1658. These 78
21 calls are only the calls known to Plaintiff at this time and Plaintiff states on information and belief,
22 without yet having the aid of full discovery, that it is quite likely that Defendant has made many
23 more violative calls to Plaintiff's number assigned to a paging service than the 78 of which he is
24 currently aware.

25 9. Subdivision (b) (1) of Section 64.1200 of Title 47 of the Code of Federal
26 Regulations requires that all prerecorded telephone messages disseminated within the United States
27 must "At the beginning of the message, state clearly the identity of the business, individual, or other
28 entity that is responsible for initiating the call. If a business is responsible for initiating the call, the

1 name under which the entity is registered to conduct business with the State Corporation
2 Commission (or comparable regulatory authority) must be stated."

3 10. Defendants' illegal prerecorded message calls failed to comply with this requirement.

4 11. Subdivision (b) (2) of Section 64.1200 of Title 47 of the Code of Federal
5 Regulations requires that all prerecorded telephone messages disseminated within the United States
6 must "state clearly the telephone number (other than that of the autodialer or prerecorded message
7 player that placed the call) of such business, other entity, or individual. The telephone number may
8 not be a 900 number or any number for which charges exceed local or long distance transmission
9 charges. For telemarketing messages to residential telephone subscribers, such telephone numbers
10 must permit any individual to make a do-not-call request during regular business hours for the
11 duration of the telemarketing campaign."

12 12. Defendants' illegal prerecorded message calls failed to comply with this requirement.

13 13. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
14 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii) and 47 C.F.R.
15 §64.1200. Plaintiff is entitled to a minimum of \$500.00 in statutory damages for each such violation.
16 If the court finds that defendants' violations were willful or knowing, it may, in its discretion, award
17 up to three times that amount.

18 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
19 follows:

20 On the FIRST AND ONLY CAUSE OF ACTION:

- 21 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 and 47 C.F.R. §
22 64.1200;
23 2. For an award of \$1,500.00 for each such violation found to have been willful;
24 3. For costs of suit herein incurred; and
25 4. For such further relief as the Court deems proper.

26 Dated: October 1, 2007


27 By: 
28 CHAD AUSTIN, Esq.
Attorney for Plaintiff JAMES M.
KINDER

EXHIBIT 24

15/09 2007 13:35 FAX 619 295 1401

CHAD AUSTIN ESQ

005/008

1 Chad Austin, Esq. SBN 235457
2 3129 India Street
3 San Diego, CA 92103-6014
4 Telephone: (619) 297-8888
5 Facsimile: (619) 295-1401

6 Attorney for Plaintiff JAMES M. KINDER, an individual

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10
11 JAMES M. KINDER,

12 Plaintiff,

13 v.

14 CAVALRY INVESTMENTS, LLC dba
15 CAVALRY PORTFOLIO SERVICES and
16 and DOES 1 through 100, inclusive,

17 Defendants.

CASE NO.

COMPLAINT FOR DAMAGES

Violations of Telephone Consumer
Protection Act of 1991

18 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges
19 as follows:

20 **GENERAL ALLEGATIONS**

21 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
22 Diego, State of California.

23 2. Defendant CAVALRY INVESTMENTS, LLC dba CAVALRY PORTFOLIO
24 SERVICES (hereinafter referred to as "Defendant"), was at all times herein mentioned a Delaware
25 Limited Liability Company, doing business in the County of San Diego, State of California.

26 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
27 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
28 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

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CHAD AUSTIN ESQ

006/006

1 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants
2 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
3 herein alleged were proximately caused by their conduct.

4 4. At all times herein mentioned each defendant was the partner, agent and employee
5 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
6 and employment and each defendant ratified the conduct of each co-defendant herein.

7 **FIRST AND ONLY CAUSE OF ACTION**
8 [Violation of Telephone Consumer Protection Act of 1991]

9 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
10 reference.

11 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer
12 Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

13 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code
14 makes it unlawful for any person to "Make any call (other than a call made for emergency purposes
15 or made with the prior express consent of the called party) using any automatic telephone dialing
16 system or an artificial or prerecorded voice...to any telephone number assigned to a paging service,
17 specialized mobile radio service, or other radio common carrier service, or any service for which the
18 called party is charged for the call."

19 8. Defendants have been calling Plaintiff's number assigned to a paging service, using
20 an Automatic Telephone Dialing System and/or an artificial or prerecorded voice on at least 45
21 occasions within the statutory period of the last 4 years, pursuant to 47 U.S.C. § 1658. These 45
22 calls are only the calls known to Plaintiff at this time and Plaintiff states on information and belief,
23 without yet having the aid of full discovery, that it is quite likely that Defendant has made many
24 more violative calls to Plaintiff's number assigned to a paging service than the 45 of which he is
25 currently aware.

26 9. Subdivision (b) (1) of Section 64.1200 of Title 47 of the Code of Federal
27 Regulations requires that all prerecorded telephone messages disseminated within the United States
28 must "At the beginning of the message, state clearly the identity of the business, individual, or other

15/09 2007 13:36 FAX 619 295 1401

CHAD AUSTIN ESQ

0007/008

1 entity that is responsible for initiating the call. If a business is responsible for initiating the call, the
2 name under which the entity is registered to conduct business with the State Corporation
3 Commission (or comparable regulatory authority) must be stated."

4 10. All 45 of Defendants' known illegal prerecorded message calls failed to comply with
5 this requirement.

6 11. Subdivision (b) (2) of Section 64.1200 of Title 47 of the Code of Federal
7 Regulations requires that all prerecorded telephone messages disseminated within the United States
8 must "state clearly the telephone number (other than that of the autodialer or prerecorded message
9 player that placed the call) of such business, other entity, or individual. The telephone number may
10 not be a 900 number or any number for which charges exceed local or long distance transmission
11 charges. For telemarketing messages to residential telephone subscribers, such telephone numbers
12 must permit any individual to make a do-not-call request during regular business hours for the
13 duration of the telemarketing campaign."

14 12. Three (3) of Defendants' 45 known illegal prerecorded message calls failed to
15 comply with this requirement.

16 13. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
17 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii), 47 C.F.R.
18 §64.1200 (b) (1) and 47 C.F.R. §64.1200 (b) (2). Plaintiff is entitled to a minimum of \$500.00 in
19 statutory damages for each such violation. If the court finds that defendants' violations were willful
20 or knowing, it may, in its discretion, award up to three times that amount.

21 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
22 follows:

23 On the FIRST AND ONLY CAUSE OF ACTION:

- 24 1. For an award of \$500.00 for each violation of 47 U.S.C. §227 and 47 C.F.R. §
25 64.1200;
26 2. For an award of \$1,500.00 for each such violation found to have been willful;
27 3. For costs of suit herein incurred; and

28 ///

///

15/09 2007 13:36 FAX 619 295 1401

CHAD AUSTIN ESQ

008/008

1 4. For such other and further relief as the Court deems proper.

2 Dated: August , 2007

3

4

5

By: _____

CHAD AUSTIN, Esq.
Attorney for Plaintiff JAMES M.
KINDER

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EXHIBIT 25

1 Chad Austin, Esq. SBN 235457
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6 Attorney for Plaintiff JAMES M. KINDER, an individual

FILED
CIVIL DIVISION DEPT. 19
07 OCT -2 PM 4:32
CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10
11 JAMES M. KINDER,

12 Plaintiff,

13 v.

14 HARRAH'S ENTERTAINMENT, Inc. and
15 DOES 1 through 100, inclusive,

16 Defendants.

CASE NO. 37-2007-00076114-CU-MC-CTL

COMPLAINT FOR DAMAGES,
INCLUDING PUNITIVE DAMAGES,
INTEREST AND ATTORNEY'S FEES,
AND FOR INJUNCTIVE RELIEF

Violations of Telephone Consumer
Protection Act of 1991
Violations of California Civil Code § 1770
(a) (22) (A)
Trespass to Chattel
Unfair Business Practices

17
18
19 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges as
20 follows:

21 **GENERAL ALLEGATIONS**

22 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
23 Diego, State of California.

24 2. Defendant HARRAH'S ENTERTAINMENT, Inc. (hereinafter referred to as
25 "Defendant") was at all times herein mentioned a Delaware corporation, doing business in the
26 County of San Diego, State of California.

27 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
28 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.

1 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
2 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants
3 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
4 herein alleged were proximately caused by their conduct.

5 4. At all times herein mentioned each defendant was the partner, agent and employee
6 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
7 and employment and each defendant ratified the conduct of each co-defendant herein.

8
9 **FIRST CAUSE OF ACTION**

10 [Violation of Telephone Consumer Protection Act of 1991]

11 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
12 reference.

13 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone
14 Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

15 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States
16 Code makes it unlawful for any person to "Make any call (other than a call made for emergency
17 purposes or made with the prior express consent of the called party) using any automatic
18 telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned
19 to a paging service, specialized mobile radio service, or other radio common carrier service, or
20 any service for which the called party is charged for the call."

21 8. Defendants have been calling Plaintiff's number assigned to a paging service, using
22 an artificial or prerecorded voice, without Plaintiff's express permission. These calls were not made
23 for any emergency purpose, nor were these calls exempt under subdivision (c) of section 64.1200
24 of title 47 of the Code of Federal Regulations.

25 9. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
26 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii). Plaintiff
27 may obtain relief in the form of injunctive relief, or Plaintiff may recover \$500.00 for each
28 violation, or both. If the court finds that defendants' violations were willful or knowing, it may,

1 in its discretion, award up to three times that amount.

2
3 **SECOND CAUSE OF ACTION**

4 [Violation(s) of California Civil Code § 1770 (a) (22) (A)]

5 10. Plaintiff realleges paragraphs 1 through 9 above and incorporates them herein by
6 reference.

7 11. California Civil Code § 1770 (a) (22) (A) requires that all recorded messages
8 disseminated within the state be introduced by a live, natural voice giving the name of the entity
9 calling, the name of the entity being represented, an address or phone number for that entity, and
10 asking permission to play the recording. Defendant's illegal prerecorded telemarketing calls to
11 Plaintiff failed to comply with this requirement.

12 12. As a proximate result of defendants' violation of Civil Code section 1770,
13 plaintiff has suffered and continues to suffer damages in an amount not yet ascertained, to be
14 proven at trial.

15 13. Civil Code section 1780 (a) (2) provides for an injunction against future conduct
16 in violation of Civil Code section 1770.

17 14. Civil Code section 1780 (a) (4) provides for an award of punitive damages for
18 violations of Civil Code section 1770.

19 15. Civil Code section 1780 (d) provides for an award of attorneys fees for plaintiffs
20 harmed by California Civil Code §1770 (a) (22) (A) violations.

21 **THIRD CAUSE OF ACTION**

22 [Trespass to Chattel]

23 16. Plaintiff realleges paragraphs 1 through 15 above and incorporates them herein by
24 reference.

25 17. The conduct by defendants complained of herein, namely calling Plaintiff's
26 number assigned to a paging service, using an artificial or prerecorded voice, without Plaintiff's
27 express permission, constitutes an electronic trespass to chattel.

28 18. At no time did Plaintiff consent to this trespass.

1 19. As a proximate result of these intrusions, Plaintiff suffered damage in an amount
2 according to proof.

3 20. In making the illegal calls described above, defendants were guilty of
4 oppression and malice, in that defendants made said calls with the intent to vex, injure, or
5 annoy Plaintiff or with a willful and conscious disregard of Plaintiff's rights. Plaintiff therefore
6 seeks an award of punitive damages.

7
8 **FOURTH CAUSE OF ACTION**
9 **[Engaging in Unfair Business Practices]**

10 21. Plaintiff realleges paragraphs 1 through 20 above and incorporates them herein by
11 reference.

12 22. Because these telephone calls violate federal statutes, they are unlawful business
13 practices within the meaning of section 17200 of the Business and Professions Code.

14 23. Section 17203 of the Business and Professions Code entitles Plaintiff to an
15 injunction enjoining defendants from engaging in unfair or unlawful business practices.

16 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
17 follows:

18 On the FIRST CAUSE OF ACTION:

- 19 1. For an award of \$500.00 for each violation of 47 U.S.C. §227;
20 2. For an award of \$1,500.00 for each such violation found to have been willful;

21 On the SECOND CAUSE OF ACTION:

- 22 3. For compensatory damages according to proof;
23 4. For preliminary and permanent injunctions, enjoining Defendants, and each of
24 them, from engaging in activity in violation of California Civil Code §1770 (a)
25 (22) (A);
26 5. For punitive damages;
27 6. For attorneys fees;

28 ///

1 On the THIRD CAUSE OF ACTION:

2 7. For compensatory damages according to proof;

3 8. For punitive damages;

4 On the FOURTH CAUSE OF ACTION:

5 9. For preliminary and permanent injunctions, enjoining Defendants, and each of
6 them, from engaging in unfair or unlawful business practices pursuant to section
7 17203 of the Business and Professions Code;

8 On ALL CAUSES OF ACTION:

9 10. For attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 11. For costs of suit herein incurred; and

11 12. For such further relief as the Court deems proper.

12 Dated: October 2, 2007

13

14

By: 

CHAD AUSTIN, Esq.
Attorney for Plaintiff JAMES M.
KINDER

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EXHIBIT 26

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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 JAMES M. KINDER,

12 Plaintiff,

13 vs.

14 HARRAH'S ENTERTAINMENT, INC.,

15 Defendant.
16

CASE NO. 07CV2226

**ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS**

[Doc. 5, 14-3]

17 Pending before the Court is Defendant's motion to dismiss pursuant to Federal Rules of Civil
18 Procedure 12(b)(2) and 12(b)(6), which is currently set for hearing on January 25, 2008. The Court
19 finds this matter suitable for submission without oral argument pursuant to Local Civil Rule 71.(d)(1).
20 Accordingly, no appearances are required at this time. The motion is denied.¹

21 Plaintiff alleges Defendant violated the Telephone Consumer Protection Act of 1991 (TCPA,
22 found at 47 U.S.C. § 227 and 47 C.F.R. § 64.1200) by repeatedly calling Plaintiff's pager service with
23 an automatic dialer or recorded voice. This is one of several similar lawsuits currently pending in
24 federal court. In 2003, after filing several similar lawsuits in California state courts, Plaintiff was
25 declared a "vexatious litigant" by the state of California, which subjected him to a pre-filing order
26 requiring him to obtain leave of the court before filing a complaint based on facts substantially similar

27
28 ¹ Defendant also moved to strike most of the contents of the declaration of Chad Austin and
accompanying exhibits. (Doc. 14-3). That motion is denied as moot, since consideration of those
exhibits was not necessary for ruling on this motion.

1 to the facts asserted and claims made in the original lawsuits. *See In re Shieh*, 17 Cal. App. 4th 1154
2 (1993). Defendant argues the instant case should be dismissed because Plaintiff failed to obtain leave
3 of court to file the Complaint in compliance with the pre-filing order. However, Defendant offers no
4 evidence, and Plaintiff has not admitted, that Plaintiff was subject to the pre-filing order on October
5 7, 2007 when he filed this lawsuit in state court. Defendant's uncontroverted evidence demonstrates
6 only that Plaintiff was labeled a vexatious litigant as of September 28, 2007. Moreover, Defendant
7 points to no authority for dismissing a lawsuit currently in *federal* court because a Plaintiff failed to
8 follow state court vexatious litigation procedures. Accordingly, Defendant's motion to dismiss on
9 grounds of failure to obtain leave of the court before filing is denied without prejudice, to be
10 reconsidered if appropriate.²

11 Defendant next argues the Court lacks personal jurisdiction over Defendant because Defendant
12 does not have sufficient minimum contacts with California. However, if Plaintiff's allegations that
13 Defendant repeatedly and illegally called Plaintiff's pager service are true, the claims arise out of
14 Defendant's contacts with California and personal jurisdiction exists. *Burger King v. Rudzewicz*, 471
15 U.S. at 472-73 (1985). The facts giving rise to jurisdiction are therefore the same facts that, if proven,
16 lend merit to Plaintiff's case.

17 When "jurisdictional facts are intertwined with the merits," it is "preferable that [the
18 jurisdiction] determination be made at trial, where a plaintiff may present his case in a coherent,
19 orderly fashion and without the risk of prejudicing his case on the merits." *Data Discovery, Inc. v.*
20 *Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 n.2 (9th Cir.1977). Since the Court is
21 therefore not holding an evidentiary hearing before ruling on the motion, it is enough that Plaintiff
22 alleged facts which, if true, are sufficient to support the exercise of personal jurisdiction over
23 Defendant. *See Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clemens Ltd.*, 328 F.3d 1122, 1129
24 (9th Cir. 2003).

25
26 ² Plaintiff also argues that any pre-filing order does not apply because Plaintiff commenced this
27 action while represented by counsel. Plaintiff is incorrect. California Code of Civil Procedure § 391,
28 which sets forth the scheme for dealing with vexatious litigants, restricts the *initial classification* of
vexatious litigants to persons acting *in propria persona*. However, once a person is declared a vexatious
litigant, filing subsequent lawsuits through counsel does not exempt him from the requirements of the
pre-filing order. *In re Shieh*, 17 Cal. App. 4th at 1166. (The plaintiff "clearly fit[] the definition of a
vexatious litigant" even though he "presently [was] represented by counsel.")

1 Defendant further argues Plaintiff fails to state a claim under Federal Rule of Civil Procedure
2 12(b)(6) because he named the wrong party to the action. In support of this statement, Defendant
3 produced a declaration by Defendant's Chief Litigation Officer, who declares under penalty of perjury
4 that Harrah's Entertainment, Inc. "does not make telemarketing or other telephone calls to individuals
5 in California using an automatic telephone dialing system, artificial or prerecorded voice, or
6 otherwise." (Kostrinsky Decl., ¶ 3). In ruling on a motion to dismiss, the Court may not weigh
7 evidence, and instead must take all allegations as true. Plaintiff properly alleged Defendant made the
8 phone calls at issue. Accordingly, Defendant's motion to dismiss on grounds that Plaintiff named the
9 wrong Defendant is denied. Defendant shall respond to the Complaint in accordance with applicable
10 law.

11 **IT IS SO ORDERED.**

12
13 DATED: January 22, 2008

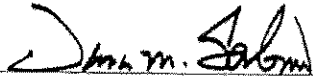
14 
15 HON. DANA M. SABRAW
16 United States District Judge
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EXHIBIT 27

THE STATE BAR OF CALIFORNIA

Friday, February 1, 2008

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ATTORNEY SEARCH

James Michael Kinder - #66425

Current Status: Resigned

This member is resigned and may not practice law in California.

See below for more details.

Profile Information

Bar Number	66425		
Address	444 W "C" St #300 San Diego, CA 92101	Phone Number	Not Available
		Fax Number	Not Available
		e-mail	Not Available
District	District 9	Undergraduate School	Ball State Univ; Muncie IN
County	San Diego	Law School	Western State Univ; CA
Sections	None		

Status History

Effective Date	Status Change
<i>Present</i>	Resigned
3/25/1989	Resigned
8/15/1986	Not Eligible To Practice Law
12/16/1975	Admitted to The State Bar of California

Explanation of member status

Actions Affecting Eligibility to Practice Law

Effective Date	Description	Case Number	Resulting Status
Disciplinary and Related Actions			
3/25/1989	Resignation with charges pending	89-Q-10071	Resigned
1/30/1989	Vol.inactive(tender of resign.w/charges)	89-Q-10071	Not Eligible To Practice Law
8/15/1986	Interim suspension after conviction	88-C-11166	Not Eligible To Practice Law

Administrative Actions

This member has no public record of administrative actions.

Copies of official attorney discipline records are available upon request.

Explanation of common actions

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EXHIBIT 28

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 Letters
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City Lights

Visit Don Bauder's new blog for more San Diego politics and user comments!

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Published on January 17, 2008

Phone Wars
 By Don Bauder

Former president George H.W. Bush pledged to make the U.S. a "kinder and gentler nation." He was not thinking of James Kinder of La Jolla, a onetime lawyer who resigned from the state bar in 1989 after being recommended for disbarment. For one thing, Kinder's name rhymes with "tinder," not "binder." For another, Kinder has continued filing lawsuits by the hundreds, even after his run-in with the bar and, later, being named a vexatious litigant, or chronic court abuser, by superior court in 2003.

Kinder's presence won't make any place gentler. For example, in a deposition that he took under penalty of perjury in the year 2000, Kinder referred to a judge who had denied his claim as "the old fart judge pro tem." Asked why he was filing so many lawsuits against companies he claimed were harassing him telephonically, Kinder replied, "I am going to sue the shit out of every one of them because they are screwing with me and they don't care." When asked how many calls he had received from a company he was suing, Kinder replied, "Shit, I don't know. I get so fuckin' pissed off about this."

Since the late 1970s, Kinder has been involved in well over 600 lawsuits, overwhelmingly as the plaintiff, in superior court and small claims court. On February 1, in the courtroom of Judge Ronald L. Styn, 85 companies and organizations will ask to have their cases combined. They have been named defendants in individual Kinder suits. The

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 Sporting Box
 Surf Diego
 T.G.I.F.
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 US: (877) 230-0078

defendants include some hefty outfits: Wells Fargo, JPMorgan Chase, General Motors Acceptance, Time Warner Cable, Blockbuster, Travelers Insurance, and Microsoft. The defendants won't talk, but the word is that a bundling of these cases is a certainty. You see, in Kinder's own words, judges are "fuckin' pissed off" too.

Here's Kinder's game: In 1996, he got the phone number 619-999-9999 for his pager. Immediately, he began getting swamped with autodialer calls. Within three years, he launched the lawsuit binge. There are several reasons why calls may flood into a 999-9999 number. One is that a collection agency, say, that doesn't have a number for someone it wants to reach has to put something in the computer on the phone number line. If the blank isn't filled in, the computer will balk like a mule. So an area code plus 999-9999 is put in the blanks. The 999-9999 number is the default or "dead air" number for most autodialers. Also, some people filling out a form, but not wanting to receive calls, will plug in 999-9999. Clerks who haven't been given a phone number will write in the 9s too.

After he got hundreds of calls, Kinder began recording the calls and suing those who made them under the Telephone Consumer Protection Act of 1991, which was signed into law by the aforementioned President George H.W. Bush. This federal law restricts telemarketers in the use of automatic dialing systems and prerecorded voice messages. Among many other things, it bans early-morning and late-evening solicitation calls. Kinder has elaborate systems to monitor the calls he receives, and then he goes to court to collect money, usually \$500 to \$1500 per autodialer call to a receiver that he calls a pager. Although the protection act is federal, most lawsuits filed under it are in state courts.

Kinder has claimed in a deposition that he received as many as 63,000 calls one month. The volume is down to 4000 to 5000 now. He has insisted in these depositions that the calls drive him absolutely crazy. Consistently, he is asked: if you are going crazy, why don't you get rid of that number? He replies that such a number is a valuable marketing tool for his various businesses. In fact, when I interviewed him, that was the only question he would answer: "I have a B.S. in marketing. This is the most valuable telephone number in the San Diego area code, so I am not willing to give up my number. It is an unforgettable number," he said. In a deposition, he said it was worth \$2 million to \$3 million.

He claims in depositions that he represents the little people against telemarketers, but his opponents argue that he is abusing the court system to make money. Many defendants have simply settled, but others won't. He claims he sued one company for \$75 million. It fought. Other defendants say they are not telemarketers; for example, they may be a doctor's office trying to reach a patient with a reminder of an upcoming appointment. And the Telephone Consumer Protection

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Act often does not apply in suits Kinder files, say defendants.

Kinder's credibility is not helped by his record. In July 1988, the hearing panel of the State Bar of California recommended that he be disbarred after being convicted of crimes involving moral turpitude. (He got a five-year stayed sentence.) He had been a personal injury lawyer. In 1979, according to the panel, Kinder forged a document certifying that his client had married a man. Problem: the groom was dead. The bride got the dead groom's benefits, and Kinder took one-third of them, or \$3300, according to the panel. Kinder had officially tied the knot as a minister of the Universal Life Church, a Modesto-based mail-order operation that hands out minister's ordinations almost immediately for free. (The so-called church would go on to lose money in San Diego's J. David pyramid scheme of the 1980s.) According to the bar panel, Kinder concealed the crime for six years and then tried to get the faux widow not to sing to the police.

The panel also noted two occasions on which Kinder warned opposing lawyers that he would counsel his clients to make untrue statements. Kinder had an alcohol problem in those years, and a psychiatrist testified that he was in treatment and could practice law. But the panel said the "bad faith, dishonesty, concealment, and overreaching" added up to moral turpitude, and he should be disbarred. Early the next year, he resigned and went on to operate Rainbow Towing, Rainbow Rent-A-Car, Rainbow Carpet Cleaning, and Rainbow Auto Repair from an unimposing building at 3129 India Street.

He soon ran into other problems. Rainbow was parking cars all over the street. In the late 1990s, Dona Loshonkohl Hufford of the San Diego Police Department began ticketing those cars. Kinder filed numerous complaints against her. She countersued and was awarded \$350,000 and got a restraining order against him. Early last year, she won another \$900,000 from him. Her boyfriend was dying as a result of a bad auto accident. At the accident scene, as she held him in her arms, Kinder stared her down. The court sided with her.

From Rainbow's humble headquarters, Kinder began the lawsuits in 1999, suing in propria persona, or on his own behalf, but in 2003 he was declared a vexatious litigant, or one who repeatedly files groundless suits. Then he hired two young lawyers. The Kinder team still operates from the India Street office, monitoring calls and suing the so-called offenders.

In a typical letter, one of his lawyers, Chad Austin, wrote Equidata of Newport News, Virginia, in February of last year, claiming that it had made 64 autodialer calls to Kinder's so-called pager and owed \$64,000. His letter to Kenneth Copeland Ministries of Newark, Texas, also in February, demanded \$10,000. Both have been named in the suits that the defense seeks to consolidate February 1. Austin refused comment.

Defendants in those suits charge that the paging function has been disconnected and replaced by a sophisticated computer system with multiple tape recorders and date/time stamps.

Los Angeles lawyer Andrew Struve is defending U.S. HealthWorks in the ongoing case. It is charged with making 223 calls. The telephone protection law "was a well-intentioned law designed to prevent people from receiving unsolicited calls from telemarketers where the receiver gets charged," says Struve. Kinder claims his device is a pager, and he has to pay for incoming calls, "but it is not a pager." Struve's client consists of doctors trying to contact patients.

Ronald Stargis, a Sacramento lawyer, won against Kinder in small-claims court. Stargis was able to show that a dialing machine used by a collection agency was "not statutorily defined as an automated dialing device," he said.

As the current case proceeds, such arguments will ring out in superior court. Call it Kindergarten.

Return to [City Lights](#) main page.

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Comments

Posted by **legal eyes** on 01/17/08 @ 7:37 pm

We see his dumb ass almost every day at the Hall of Justice...He is a joke! OOPs don't you DARE print my info, he might sue me!!!!

Reply by **Don Bauder**

Your identity will remain a secret. Best, Don Bauder

Posted by **Billy Bob Henry** on 01/17/08 @ 10:22 pm

I remember the case about the parking tickets and the lawsuit the traffic cop won, and I was wondering how this guy was going to pay. By the sound of it I guess he is "judgment proof"...lol.

Reply by **Don Bauder**

In one of his depositions, he said he had plenty of money because he had invested in real estate while his personal injury law operation was thriving. Best, Don Bauder

Posted by **Beetle B** on 01/17/08 @ 11:45 pm

And who is paying for these new case filings at over \$300.00 per case? Is it Kinder's legal "dream team" or is he filing fee waivers and letting the taxpayers of San Diego County pick up the tab??? hmhmhmhm

Reply by **Don Bauder**

As stated in previous post, he has said in a deposition that he is wealthy. The suits are filed by his lawyers, since he is deemed a vexatious litigant. Best, Don Bauder

Posted by **shizzyfinn** on 01/18/08 @ 8:44 am

this particular lawyer sounds like a disease. i hope, though, that this article is not used as an indictment of all trial lawyers, most of whom pursue legitimate cases and bring about a lot of public good. most trial lawyers do good work, and help average people with relatively little power get justice in the face of resistance from monied interests. So hopefully the angst will stay focused on abusers like Kinder, and not the system itself.

Reply by **Don Bauder**

I think trial lawyers often go too far, but if the regulatory agencies continue to be emasculated, the public has nowhere else to turn. Best, Don Bauder

Posted by **Fed up with telemarketers** on 01/18/08 @ 8:59 am

As much as Kinder sounds like a epic tool, I'm glad he's putting it to the telemarketers. I keep getting the same automated call, every other night. "your car warranty has expired... blah blah blah". Driving me crazy. Wouldn't mind getting \$500 bucks per call. Yes, I'm on the do not call registry. Yes I get tons of calls for mortgage refi's, the car warranty folks, medical crap, you name it.

Reply by **Don Bauder**

I have spent much of my journalistic years attacking telemarketers. But I don't buy into Kinder's scheme. He claims he won't drop that 999-9999 number because it's such a good marketing tool. But he obviously uses it just to give himself fodder for lawsuits. Best, Don Bauder

Sound Off

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